

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

----- x
IN RE VITAMINS ANTITRUST LITIGATION :
This filing relates to: :
ANIMAL SCIENCE PRODUCTS, INC., et al., :
Plaintiffs. : Misc. No. 99-197 (TFH)
- against - : MDL No. 1285
CHINOOK GROUP, LTD., et al., :
Defendants. :
----- x

FILED

MAR 9 - 2001

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

SETTLEMENT AGREEMENT

nm
any This Settlement Agreement (hereinafter, "Agreement") is made and entered
into as of the 1st day of December, 2000, by and between Akzo Nobel Chemicals B.V. and
Akzo Nobel Inc. (collectively referred to herein as "Akzo"), and the Akzo Settlement Class (as
defined herein) in the above-captioned action (the "Class Action"):

WHEREAS, there is pending in the United States District Court for the District
of Columbia a multidistrict consolidated proceeding comprised of actions, including the Class
Action, brought on behalf of direct purchasers of various vitamins and vitamin products cap-
tioned as In re Vitamins Antitrust Litigation, Misc. No. 99-0197, M.D.L. No. 1285

(hereinafter, the "MDL Proceedings"). in which plaintiffs have alleged violations of law, including the existence of unlawful conspiracies to fix, raise, maintain, or stabilize the prices of certain Vitamin Products (as defined herein) in the United States and elsewhere in violation of Section 1 of the Sherman Antitrust Act, and other wrongful anti-competitive conduct in violation of various federal and state laws;

WHEREAS, Akzo has asserted a number of defenses to the claims asserted by the Class Plaintiffs (as defined herein);

WHEREAS, the Class Plaintiffs and Akzo agree that neither this Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against Akzo or any of its alleged co-conspirators or evidence of the truth of any of the Class Plaintiffs' allegations;

WHEREAS, arm's length settlement negotiations have taken place between Class Plaintiffs' Co-Lead Counsel and Akzo, and this Agreement, including its exhibits, which embodies all of the terms and conditions of the settlement between Akzo and the Akzo Settlement Class, has been reached, subject to the approval of the Court and Final Approval as provided herein;

WHEREAS, Class Plaintiffs' Co-Lead Counsel have concluded, after due investigation and after carefully considering the relevant circumstances, including, without limitation, the claims asserted in the Second Consolidated Amended Class Action Complaint

filed in the Class Action, the legal and factual defenses thereto and the applicable law, that it would be in the best interests of the Akzo Settlement Class to enter into this Agreement in order to avoid the uncertainties of litigation and to assure that the benefits reflected herein are obtained for the Akzo Settlement Class and, further, that Class Plaintiffs' Co-Lead Counsel consider the settlement set forth herein to be fair, reasonable and adequate and in the best interests of Class Plaintiffs and all members of the Akzo Settlement Class:

WHEREAS, the Class Action will continue against those Defendants that are not Releasees (as defined herein); and

WHEREAS, Akzo, despite its belief that it has good defenses to the claims asserted against it in the MDL Proceedings, including the Class Action, has nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, and thereby to put to rest this controversy with respect to the Akzo Settlement Class;

NOW, THEREFORE, it is agreed by and between the undersigned, on behalf of Akzo and the Akzo Settlement Class, that the Class Action be settled, compromised and dismissed on the merits and with prejudice as to Akzo and all other Releasees and, except as hereafter provided, without costs against the Akzo Settlement Class or Akzo, subject to the approval of the Court, on the following terms and conditions:

1. Class Definition. Subject to the Court's approval and for the purposes of this Agreement only, the undersigned agree and consent to the certification of the following Akzo Settlement Class in the Class Action:

All persons or entities who directly purchased vitamin B4 (choline chloride) in the United States or for delivery in the United States from any of the Defendants or their co-conspirators from January 1, 1988 through December 31, 1998. Excluded from the class are all governmental entities, Defendants, their co-conspirators, and their respective subsidiaries and affiliates.

2. Definitions. As used in this Agreement, the following terms shall be defined as indicated:

(a) "Akzo Settlement Class Member" means any person falling within the definition of the Akzo Settlement Class defined in paragraph 1 hereof that has not timely and validly excluded itself from the Akzo Settlement Class in accordance with the procedure to be established by the Court.

(b) "Class Counsel" means both (i) those attorneys or law firms retained as counsel for any Class Plaintiff and (ii) those attorneys or law firms that receive any portion of the attorneys' fee awarded by the Court in connection with this Settlement.

(c) "Class Plaintiffs" means the named plaintiffs in the Class Action.

(d) "Court" means the United States District Court for the District of Columbia.

(e) "Defendant" means any person or entity named as a defendant in the Class Action.

(f) "Escrow Account" means the account established for receipt of Akzo's payment pursuant to paragraph 7 hereof.

(g) "Final Approval" means the first date upon which each of the following three conditions shall have been satisfied:

- a) The Settlement has been approved in all respects by the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure;
- b) Entry has been made, as provided in paragraph 6 hereof, of the final judgment of dismissal in substantially the form of Exhibit D hereto; and
- c) Either (i) the time to appeal, or to seek permission to appeal, the Court's approval of the Settlement as described in a) hereof and entry of final judgment as described in b) hereof has expired with no appeal having been taken or permission to appeal having been sought; or (ii) such approval and final judgment have been affirmed in their entirety by the court of last resort to which any appeal has been taken or petition for review has been

presented and such affirmance has become no longer subject to the possibility of further appeal or review.

(h) "Released Claims" shall have the meaning set forth in paragraph 15 hereof.

(i) "Releasees" means Akzo Nobel Chemicals B.V., Akzo Nobel Inc., their respective direct and indirect parents (including without limitation Akzo Nobel N.V.), subsidiaries and affiliates, the present and former officers, directors, members of any supervisory board or board of management, employees, agents, and legal representatives of each of the foregoing, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing; provided, however, that for purposes of this Agreement, "Releasees" does not include any of the individuals or entities identified in Exhibit A hereto. As used in this definition, "affiliates" means entities controlling, controlled by or under common control with a Releasee.

(j) "Releasers" means each Akzo Settlement Class Member on its own behalf and on behalf of its respective direct and indirect parents, subsidiaries and affiliates, the present and former officers, directors, employees, agents, and legal representatives of each of the foregoing, and the predecessors, successors, heirs, executors, administrators and assigns of each of the foregoing. As used in this

definition, "affiliates" means entities controlling, controlled by or under common control with a Releasor.

(k) "Settlement" means the settlement of the Released Claims set forth herein.

(l) "Settlement Fund" means the payment made by Akzo pursuant to paragraph 7 hereof, including any interest accrued on such payment after it is made by Akzo.

(m) "Settlement Hearing" shall have the meaning set forth in paragraph 5 hereof.

(n) "United States" means the United States and its territories and possessions.

(o) "Vitamin Product(s)" means (i) the following vitamins and carotenoids: vitamin A, astaxanthin, vitamin B1 (thiamin), vitamin B2 (riboflavin), vitamin B3 (niacin), vitamin B4 (choline chloride), vitamin B5 (calpan), vitamin B6, vitamin B9 (folic acid), vitamin B12 (cyanocobalamine pharma), beta-carotene, vitamin C, canthaxanthin, vitamin E and vitamin H (biotin), as well as all blends and forms of the foregoing, and (ii) premix, which is defined to mean any product that contains one or more Vitamin Products in combination with other

substances (such as other active ingredients or dilution agents) and is sold as a premixed formulation.

3. Reasonable Best Efforts to Effectuate This Settlement. Class Plaintiffs' Co-Lead Counsel agree to recommend approval of this Agreement by the Court and by the members of the Akzo Settlement Class. Class Plaintiffs' Co-Lead Counsel and counsel for Akzo agree to undertake their reasonable best efforts, including all steps and efforts contemplated by this Agreement and any other steps and efforts that may be necessary or appropriate, by order of the Court or otherwise, to carry out the terms of this Agreement.

4. Motion for Preliminary Approval. As soon as is possible and in no event later than 10 days after execution of this Agreement, Class Plaintiffs' Co-Lead Counsel shall submit to the Court a motion for preliminary approval of the Settlement and the final judgment contemplated by this Agreement and for a stay of all proceedings in the Class Action against Akzo until the Court renders a final decision regarding the approval of the Settlement and, if it approves the Settlement, enters the final judgment. The motion shall include (a) the proposed form of order preliminarily approving this Agreement attached as Exhibit B hereto, (b) the proposed forms of mail notice and publication notice of the Settlement to members of the Akzo Settlement Class attached as Exhibit C hereto and (c) the proposed form of order and final judgment attached as Exhibit D hereto. The parties hereto shall request that a decision be made promptly on the papers or that a hearing on Class Plaintiffs' motion for preliminary approval of the Settlement be held at the earliest date available to the Court.

5. Notice to Akzo Settlement Class. In the event that the Court preliminarily approves the Settlement, Class Plaintiffs' Co-Lead Counsel shall, in accordance with Rule 23 of the Federal Rules of Civil Procedure and the Court's order, provide those members of the Akzo Settlement Class who have been identified by reasonable means with notice by first class mail of the conditional certification of the Akzo Settlement Class and the date of the hearing scheduled by the Court to consider the fairness, adequacy and reasonableness of the proposed settlement (the "Settlement Hearing"). Such notice shall provide that, if the Court approves this Settlement following the Settlement Hearing, Class Plaintiffs' Co-Lead Counsel shall propose a plan for distribution of the Settlement Fund among Akzo Settlement Class Members. Class Plaintiffs' Co-Lead Counsel, subject to approval of the Court, shall provide Court-approved supplemental notice to Akzo Settlement Class Members describing the plan of distribution, affording Akzo Settlement Class Members an opportunity to be heard with respect to such plan of distribution, and providing Akzo Settlement Class Members with a Court-approved Claim Form.

Class Plaintiffs shall take all necessary and appropriate steps to ensure that notice of the Settlement Hearing is provided in accordance with the order of the Court. Notice of the Settlement Hearing shall also be given by publication one day a week for two consecutive weeks in the national edition of THE WALL STREET JOURNAL and once in FEEDSTUFFS and the CHEMICAL MARKET REPORTER, as soon after preliminary approval by the Court of the Settlement as is reasonably practicable. Notice shall also be given by publication on the web sites of Class Plaintiffs' Co-Lead Counsel and, subject to Court ap-

proval, on the Court's web site. In no event shall Akzo be responsible for giving notice of this Settlement to members of the Akzo Settlement Class, except as provided in paragraph 12 below.

6. Motion for Entry of Final Judgment. Class Plaintiffs' Co-Lead Counsel shall submit a motion for final approval of the Settlement by the Court, after notice to the members of the Akzo Settlement Class of the Settlement Hearing. If the Court approves the Settlement, the parties hereto shall jointly seek entry of an order and final judgment, in the form attached hereto as Exhibit D:

(a) fully and finally approving the certification of the Akzo Settlement Class and the Settlement contemplated by this Agreement and its terms as being a fair, reasonable and adequate settlement within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation pursuant to its terms and conditions;

(b) directing that the Class Action be dismissed with prejudice as to Akzo and, except as provided for herein, without costs;

(c) discharging and releasing the Releasees from all Released Claims;

(d) reserving continuing and exclusive jurisdiction over the Settlement, including its administration;

(e) determining pursuant to Fed. R. Civ. P. 54(b) that there is no just reason for delay and directing that the judgment of dismissal of the Class Action as to Akzo shall be final and appealable; and

(f) directing that, for a period of five years, the Clerk of the Court shall preserve the record of those members of the Akzo Settlement Class that have timely excluded themselves from the Settlement and that a certified copy of such record shall be provided to Akzo at its expense.

7. Settlement Consideration. Subject to the provisions hereof, and in full, complete and final settlement of the Class Action as provided herein, Akzo agrees to pay the Akzo Settlement Class the following amount in the event that the Settlement receives Final Approval. Within 10 business days after such approval, Akzo shall pay \$7,500,000, together with an amount equal to the simple interest on \$7,500,000 at the rate of nine and one-half percent (9.5%) per year, for the period beginning on August 15, 2000 and ending on the date payment is made, in United States funds, into the Escrow Account, for distribution to Akzo Settlement Class Members and for payment of any attorneys' fees, costs, expenses or other disbursements other than those expressly provided for in paragraph 12(a) of this Agreement, all subject to Court approval.

8. Escrow Account. The Escrow Account shall be established and administered under the Court's continuing supervision and control. Payments into the Escrow

Account shall, when paid, be invested in instruments secured by the full faith and credit of the United States and any interest earned shall become part of the Settlement Fund.

9. Qualified Settlement Fund. The Escrow Account is intended by the parties hereto to be treated as a "qualified settlement fund" for federal income tax purposes pursuant to Treas. Reg. § 1.468B-1, and to that end the parties hereto shall cooperate with each other and shall not take a position in any filing or before any tax authority that is inconsistent with such treatment. At the request of Akzo, a "relation back election" as described in Treas. Reg. § 1.468B-1(j) shall be made so as to enable the Escrow Account to be treated as a qualified settlement fund from the earliest date possible, and the parties hereto shall take all actions as may be necessary or appropriate to this end. The Claims Administrator previously approved by the Court in this litigation shall pay taxes or estimated taxes on any income earned on the funds in the Escrow Account and all related costs and expenses from the Escrow Account, after approval by the Court and whether or not Final Approval has occurred. In the event federal or state income tax liability is finally assessed against and paid by Akzo as a result of any income earned on the funds in the Escrow Account, Akzo shall be entitled to reimbursement of such payment from the funds in the Escrow Account, after approval by the Court and whether or not Final Approval has occurred. Akzo will use its best efforts to resist any such assessment or payment.

10. Termination by Akzo or the Akzo Settlement Class. Class Plaintiffs' Co-Lead Counsel shall, within twenty (20) business days after the Court-ordered deadline for

timely requests for exclusion from the Akzo Settlement Class, cause to be provided to counsel for Akzo a list of those members of the Akzo Settlement Class who have timely excluded themselves from the Akzo Settlement Class. Class Plaintiffs' Co-Lead Counsel also shall cause counsel for Akzo to be provided with a copy of each request for exclusion from the Akzo Settlement Class as they are received.

Class Plaintiffs' Co-Lead Counsel shall have an option to terminate this Agreement, and thus prevent Final Approval, if companies totaling in number more than an additional twenty percent (20%) relative to the opt-outs from the Choline Chloride Settlement Class that was approved by this Court on March 28, 2000, choose to remain in the Akzo Settlement Class. Akzo shall have an option to terminate this Agreement, and thus prevent Final Approval, if companies totaling in number more than an additional twenty percent (20%) relative to the opt-outs from the Choline Chloride Settlement Class that was approved by this Court on March 28, 2000, choose to opt out of the Akzo Settlement Class.

To exercise the option to terminate this Agreement, Class Plaintiffs' Co-Lead Counsel or Akzo, as the case may be, shall give notice of its intent to do so to the other in accordance with paragraph 27 of this Agreement, within thirty (30) business days after the Court-ordered deadline for timely requests for exclusion from the Akzo Settlement Class, or, if a dispute arises as to whether one or more members have submitted untimely or otherwise invalid requests for exclusion from the Akzo Settlement Class and the resolution of the dis-

pute could affect whether a party has the option to terminate this Agreement, within ten (10) business days after the resolution of the dispute, whichever is later.

11. All Claims Satisfied by Settlement Fund. Each Akzo Settlement Class Member shall look solely to the Settlement Fund for settlement and satisfaction, as provided herein, of all claims released by the Akzo Settlement Class pursuant to paragraph 15 hereof. Except as provided by order of the Court pursuant to this Agreement, no Akzo Settlement Class Member shall have any interest in the Settlement Fund or any portion thereof.

12. Payment of Expenses. (a) In the event that the Court preliminarily approves the Settlement pursuant to paragraphs 4 and 5 hereof, within ten (10) business days after receipt of notification from the Claims Administrator of the amount of Court-approved costs and expenses associated with the provision of notice to the members of the Akzo Settlement Class, Akzo shall pay that amount to the Claims Administrator in United States funds. Thereafter, on a basis no more frequent than quarterly, the Claims Administrator shall provide Akzo with a statement identifying the Court-approved costs and expenses associated with the provision of any notice to the members of the Akzo Settlement Class, otherwise incurred in administering the Settlement and/or incurred in distributing the Settlement Fund, and Akzo shall pay that amount to the Claims Administrator in United States funds within ten (10) business days after receipt of the statement. If Akzo challenges any amount listed on a statement after discussing it with the Claims Administrator, Akzo may apply to the Court to resolve the matter within ten (10) business days after the deadline for payment, and withhold payment of

the challenged amount pending resolution by the Court. If any other Defendants enter into a settlement or settlements with the Class, Class Plaintiffs' Co-Lead Counsel and the Claims Administrator shall, to the extent reasonably practicable, administer the Settlement and the other settlement(s) and distribute funds to Akzo Settlement Class Members in ways that permit costs and expenses to be shared equally by amounts paid by each affiliated group of settling Defendants (e.g., by using a single notice of two or more settlements, by using combined mailings, by making payments to Akzo Settlement Class Members from all applicable settlement funds at the same time). The maximum aggregate amount Akzo shall be required to pay under this paragraph 12(a) shall be \$400,000 (United States funds).

(b) Except as provided in paragraph 12(a) hereof, Akzo shall not be liable for any of the costs or expenses of the litigation of the Class Action, including without limitation attorneys' fees; fees and expenses of expert witnesses and consultants; and costs and expenses associated with discovery, motion practice, hearings before the Court or the Special Master, appeals, trials or the negotiation of other settlements; provided, however, that Akzo shall pay a pro rata share of any fees or expenses of the Special Master incurred to consider a dispute involving Akzo concerning this Agreement. After Final Approval, all such costs and expenses as are approved by the Court may be paid out of the Settlement Fund. Reimbursement of Class Plaintiffs' Counsel shall be limited to the amount of any costs and expenses properly allocated to the Settlement Fund, on a proportional basis, taking into account such other settlement funds obtained from other Defendants then available to Class Plaintiffs.

13. Distribution of Settlement Funds Conditioned Upon Final Approval.

After Final Approval and subject to prior Court order, disbursements may be made from the Settlement Fund to pay, on an interim basis, any reasonable costs and expenses as provided in paragraph 12(b) hereof. Such interim disbursements may be made prior to the time when the balance of the Settlement Fund less all taxes, costs and expenses payable therefrom is distributed to the members of the Akzo Settlement Class pursuant to a plan of distribution approved by the Court.

14. Court Approval of All Distributions. Court approval shall be required prior to any disbursement or any distribution from the Settlement Fund.

15. Releases. In addition to the effect of any final judgment entered in accordance with this Agreement, in the event that this Agreement is approved by the Court after the Settlement Hearing, each Releasee shall be released and forever discharged from all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, damages whenever incurred, liabilities of any nature whatsoever, including without limitation costs, expenses, penalties and attorneys' fees, known or unknown, suspected or unsuspected, asserted or unasserted, in law or in equity, which Releasors or any of them, whether directly, representatively, derivatively or in any other capacity, ever had, now have or hereafter can, shall or may have, relating in any way to any conduct prior to the date of this Agreement, concerning the purchase, sale or pricing of Vitamin Products and any and all other vitamins or relating to any conduct alleged in the Class Action including, without limitation, any

such claims that have been asserted or could have been asserted in the Class Action against the Releasees or any of them, except that this release shall not affect the rights of Releasors or any of them (i) to seek damages or other relief from any person with respect to any Vitamin Products or vitamins purchased directly from the manufacturer (or any subsidiary or affiliate thereof) outside the United States for delivery to a destination outside the United States, or (ii) to participate in or benefit from any relief or other recovery as part of a settlement or judgment on behalf of a class of indirect purchasers of Vitamin Products. The claims covered by the foregoing release are referred to herein collectively as the "Released Claims".

16. Waiver of Rights. In addition to the provisions of paragraph 15, each Akzo Settlement Class Member hereby expressly agrees that, upon Final Approval, it waives and releases with respect to the Released Claims, to the fullest extent permitted by law, any and all provisions, rights and benefits conferred by (a) § 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

and (b) any similar state, federal, or other law, rule or regulation or principle of common law. Each Releasor may hereafter discover facts other than or different from those that Releasor knows or believes to be true with respect to the subject matter of the Released Claims, but each Releasor hereby expressly agrees that, upon Final Approval, it shall have waived and fully, finally and forever settled and released any known or unknown, suspected or unsus-

pected, asserted or unasserted, contingent or non-contingent claim with respect to the Released Claims, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such other or different facts.

17. Reservation of Claims. The members of the Akzo Settlement Class intend by this Agreement to settle with and release only the Releasees that such Akzo Settlement Class Members have released pursuant to paragraphs 15 and 16 hereof, and the parties do not intend this Agreement, any part hereof or any other aspect of the proposed settlement or release, to release or otherwise affect in any way any rights any Akzo Settlement Class Member has or may have against any other party or entity whatsoever other than the Releasees released by such Akzo Settlement Class Member pursuant to paragraphs 15 and 16 hereof. More particularly, the fact or terms of this Settlement with Akzo and the releases contained herein shall not be construed to release or limit in any manner whatsoever the joint or several liability or damage responsibility of any Defendant or alleged co-conspirator other than the Releasees for the alleged conspiracies, sales or other acts alleged in these actions, including, but not limited to, any alleged damage or responsibility for any of the acts of the Releasees. In addition, the releases set forth in paragraphs 15 and 16 hereof shall not release any product liability or breach of contract claims unrelated to the subject matter of the Class Action.

18. Most Favored Nation. The Akzo Settlement Class Members agree that they will not settle their claims relating to choline chloride against any Defendant that manufactured, distributed or sold choline chloride, or that had an ownership interest of more than

25% in a Defendant that manufactured, distributed or sold choline chloride, for less than the amount, not including interest, to be paid by Akzo into the Settlement Fund pursuant to paragraph 7 hereof, exclusive of costs and expenses of the kind that are to be paid pursuant to paragraph 12(a) hereof (the "threshold amount"), unless Class Plaintiffs' Co-Lead Counsel has reasonably concluded that continued litigation against a Defendant in order to obtain a judgment or settlement in an amount equal to or greater than the threshold amount, exclusive of costs and expenses of the kind that are to be paid pursuant to paragraph 12(a) hereof, is unreasonable given the risks of litigation and/or collection. As used in this paragraph, "Defendant" means a corporation or other juridical entity, or a group of such entities that are affiliates, i.e., control one another or are under common control.

19. Cooperation. Effective upon Final Approval of this Settlement, Akzo agrees to cooperate with Class Plaintiffs in the prosecution of their claims in the Class Action. Such cooperation shall include:

- (a) using Akzo's best efforts to secure the full and truthful cooperation with Class Plaintiffs of its current and former officers, directors and employees;
- (b) making current officers, directors and employees available at mutually agreed times and places, at Akzo's expense, for interviews and for sworn testimony at pretrial depositions and at trial, if needed;

(c) using Akzo's best efforts to make former officers, directors and employees available at mutually agreed times and places, at Akzo's expense, for interviews and for sworn testimony at pretrial depositions and at trial, if needed; and

(d) providing copies of non-privileged documents within Akzo's possession, custody or control that evidence or corroborate the facts and events that relate to any issues alleged or raised in the MDL Proceedings or described by such persons.

Class Plaintiffs agree to coordinate any requests for cooperation with each party with whom Akzo has entered into an agreement which contains a similar cooperation provision so as to minimize the burden and expense to Akzo and its current and former officers, directors and employees. Akzo shall keep Class Plaintiffs' Co-Lead Counsel informed concerning the identities of any such parties. Nothing herein is intended or shall be interpreted (i) to prevent any present or former officer, director or employee of Akzo from asserting, where appropriate, whether during a deposition, an informal interview or otherwise, any Fifth Amendment privilege against self-incrimination or any attorney-client privilege held by him in his individual capacity, (ii) to require Akzo to waive or breach any attorney-client or other privilege, including without limitation attorney work-product, or to disclose information obtained in a joint defense relationship, whether any such privilege or relationship already exists or is created in the future, or (iii) to require Akzo to provide information which does not expressly

concern the North American market and which could support recovery against Akzo on a claim that is not a "Released Claim" as defined in paragraph 15 of this Agreement.

20. Discovery. As of the date of this Agreement, Class Plaintiffs shall suspend any discovery requests insofar as they seek information, documents or testimony from Akzo or any other Releasee hereunder, and Class Plaintiffs agree to adjourn any other deadlines in the Class Action insofar as they apply to Akzo or any other Releasee until such time as Final Approval is obtained or until 30 days after this Agreement is terminated.

21. Protection Against Double Class Recovery. Notwithstanding anything to the contrary contained in this Agreement, in consideration of the terms hereof and in order to induce Akzo to enter into this Agreement, Akzo Settlement Class Members shall exclude from the dollar amount collectable against any person in the Class Action or any other action on any final judgment on any claim comparable to the Released Claims an amount equal to the percentage or amount of such judgment for which any Releasee would be responsible pursuant to a valid and enforceable claim for contribution and/or indemnification, if any (other than any such claim that arises out of any voluntarily assumed contribution and/or indemnification obligation of such Releasee). Akzo and Class Plaintiffs' Co-Lead Counsel agree that no such valid and enforceable claim for contribution and/or indemnification presently exists as a matter of law. The Akzo Settlement Class Members agree that the undertaking set forth in this paragraph is not only for the benefit of the Releasees but also for the benefit of any person

against whom any such judgment is entered and that this undertaking may be enforced by any such person as a third-party beneficiary hereof.

22. Effect of Disapproval. If the Court does not approve this Agreement in its entirety, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment provided for in paragraph 6 hereof, or if the Court enters the final judgment and appellate review is sought and, on such review, such final judgment is not affirmed in its entirety, or if either Akzo or Class Plaintiffs' Co-Lead Counsel exercise their right to terminate this Agreement under paragraph 10, then this Agreement (excepting paragraphs 12(a), 20 and 28 hereof) shall be canceled and terminated and shall become null and void, and the Settlement Fund (including any and all income earned thereon net of federal taxes) shall be returned to Akzo. The parties expressly reserve all of their rights if the Settlement does not become final in accordance with the terms of this Agreement.

23. Consent to Jurisdiction. Akzo Nobel Chemicals B.V., Akzo Nobel Inc. and each Akzo Settlement Class Member hereby irrevocably submits to the exclusive jurisdiction of the Court for any suit, action, proceeding or dispute arising out of or relating to this Agreement or the applicability of this Agreement and its exhibits. Without limiting the generality of the foregoing, it is hereby agreed that any dispute concerning the provisions of paragraphs 15, 16, or 21 hereof, including but not limited to any suit, action or proceeding in which the provisions of paragraphs 15, 16, or 21 hereof are asserted as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection, constitutes a suit,

action or proceeding arising out of or relating to this Agreement and its exhibits. In the event that the provisions of paragraphs 15, 16, and/or 21 hereof are asserted by any Releasee as a defense in whole or in part to any claim or cause of action or otherwise raised as an objection in any suit, action or proceeding, it is hereby agreed that such Releasee shall be entitled to a stay of that suit, action or proceeding until the Court has entered a final judgment no longer subject to any appeal or review determining any issues relating to the defense or objection based on such provisions. Solely for purposes of such suit, action or proceeding, to the fullest extent that they may effectively do so under applicable law, the Akzo Settlement Class Members and Akzo irrevocably waive and agree not to assert, by way of motion, as a defense or otherwise, any claim or objection that they are not subject to the jurisdiction of the Court or that the Court is in any way an improper venue or an inconvenient forum. Nothing herein shall be construed as a submission to jurisdiction for any purpose other than enforcement of this Agreement.

24. Resolution of Disputes: Retention of Jurisdiction. Any disputes between or among Akzo and any Akzo Settlement Class Member or Members concerning matters contained in this Agreement shall, if they cannot be resolved by negotiation and agreement, be submitted to the Court. The Court shall retain jurisdiction over the implementation and enforcement of this Agreement.

25. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the parties hereto. Without limiting the generality of

the foregoing, each and every covenant and agreement herein by Class Plaintiffs and their counsel shall be binding upon all Akzo Settlement Class Members.

26. Authorization to Enter Settlement Agreement. The undersigned representative of Akzo represents that he is fully authorized to enter into and to execute this Agreement on behalf of Akzo. Class Plaintiffs' Co-Lead Counsel represent that they are fully authorized to conduct settlement negotiations with defense counsel on behalf of Class Plaintiffs and Class Counsel and to enter into, and to execute, this Agreement on behalf of the Akzo Settlement Class and Class Counsel, subject to Court approval pursuant to Fed. R. Civ. P. 23(e).

27. Notices. All notices under this Agreement shall be in writing. Each such notice shall be given either by (a) hand delivery; (b) registered or certified mail, return receipt requested, postage pre-paid; (c) Federal Express or similar overnight courier; or (d) facsimile and first class mail, postage pre-paid and, in the case of either (a), (b), (c) or (d) shall be addressed, if directed to any Class Plaintiff or Akzo Settlement Class Member, to Class Plaintiffs' Co-Lead Counsel at their addresses set forth on the signature pages hereof, and if directed to Akzo, to its representative at the address set forth on the signature pages hereof or such other address as Class Plaintiffs' Co-Lead Counsel or Akzo may designate, from time to time, by giving notice to all parties hereto in the manner described in this paragraph.

28. No Admission. Whether or not this Agreement becomes final or is terminated pursuant to paragraphs 10 or 22 hereof, the parties expressly agree that this

Agreement and its contents, including its exhibits, and any and all statements, negotiations, documents and discussions associated with it, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law or of any liability or wrongdoing or of the truth of any of the claims or allegations contained in the complaint in the Class Action or any other pleading, and evidence thereof shall not be discoverable or used, directly or indirectly, in any way, whether in the Class Action or in any other action or proceeding.

29. Intended Beneficiaries. Except as expressly provided in paragraph 21 hereof, no provision of this Agreement shall provide any rights to, or be enforceable by, any person or entity that is not an Akzo Settlement Class Member, a Releasee or Class Counsel. No Akzo Settlement Class Member or Class Counsel may assign or otherwise convey any right to enforce any provision of this Settlement Agreement.

30. No Conflict Intended. Any inconsistency between this Agreement and the exhibits attached hereto shall be resolved in favor of this Agreement. The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement.

31. No Party Is the Drafter. None of the parties hereto shall be considered to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law or rule of interpretation or construction that would or might cause any provision to be construed against the drafter hereof.

32. Choice of Law. All terms of this Agreement and the exhibits hereto shall be governed by and interpreted according to the substantive laws of the State of New York without regard to its choice of law or conflict of laws principles.

33. Amendment; Waiver. This Agreement shall not be modified in any respect except by a writing executed by all the parties hereto, and the waiver of any rights conferred hereunder shall be effective only if made by written instrument of the waiving party. The waiver by any party of any breach of this Agreement shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent or contemporaneous, of this Agreement.


34. Execution in Counterparts. This Agreement may be executed in counterparts. Facsimile signatures shall be considered as valid signatures as of the date hereof, although the original signature pages shall thereafter be appended to this Agreement and filed with the Court.

35. Integrated Agreement. This Agreement contains an entire, complete, and integrated statement of each and every term and provision agreed to by and between the parties hereto, and it is not subject to any condition not provided for herein.

36. Construction. This Agreement shall be construed and interpreted to effectuate the intent of the parties, which is to provide, through this Agreement, for a complete resolution of the Released Claims with respect to the Releasees.

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have executed this Agreement as of the date first herein above written.

AKZO NOBEL CHEMICALS B.V. and
AKZO NOBEL INC.

By: 

Laurence T. Sorkin
Roy L. Regozin
CAHILL GORDON & REINDEL
80 Pine Street
New York, NY 10005
Tel.: (212) 701-3000
Fax: (212) 269-5420

Attorneys for Akzo Nobel Chemicals B.V. and
Akzo Nobel Inc.

CLASS PLAINTIFFS' CO-LEAD COUNSEL,
on behalf of Class Plaintiffs individually, on behalf of
the Akzo Settlement Class, and on behalf of Class
Counsel

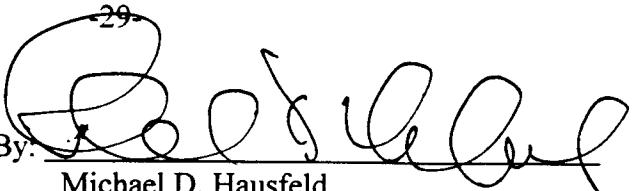
By: _____
Jonathan D. Schiller
BOIES & SCHILLER, LLP
5301 Wisconsin Avenue, N.W., Suite 570
Washington, D.C. 20015
Tel: (202) 237-2727
Fax: (202) 237-6131

By: _____

Michael D. Hausfeld
COHEN, MILSTEIN, HAUSFELD & TOLL, P.C.
1100 New York Avenue, N.W.
West Tower, Suite 500
Washington, D.C. 20005
Tel: (202) 408-4600
Fax: (202) 408-4699

By: _____

Stephen D. Susman
SUSMAN GODFREY L.L.P.
1000 Louisiana Street
Suite 5100
Houston, TX 77002
Tel: (713) 651-9366
Fax: (713) 653-7897

-29-
By: 

Michael D. Hausfeld
COHEN, MILSTEIN, HAUSFELD & TOLL, P.C.
1100 New York Avenue, N.W.
West Tower, Suite 500
Washington, D.C. 20005
Tel: (202) 408-4600
Fax: (202) 408-4699

By: _____

Stephen D. Susman
SUSMAN GODFREY L.L.P.
1000 Louisiana Street
Suite 5100
Houston, TX 77002
Tel: (713) 651-9366
Fax: (713) 653-7897

-27-

IN WITNESS WHEREOF, the parties hereto, through their fully authorized representatives, have executed this Agreement as of the date first herein above written.

**AKZO NOBEL CHEMICALS B.V. and
AKZO NOBEL INC.**

By: _____

Laurence T. Sorkin

Roy L. Regozin

CAHILL GORDON & REINDEL

80 Pine Street

New York, NY 10005

Tel.: (212) 701-3000

Fax: (212) 269-5420

**Attorneys for Akzo Nobel Chemicals B.V. and
Akzo Nobel Inc.**

CLASS PLAINTIFFS' CO-LEAD COUNSEL,
on behalf of Class Plaintiffs individually, on behalf of
the Akzo Settlement Class, and on behalf of Class
Counsel

By: _____

Jonathan D. Schiller

BOIES & SCHILLER, LLP

530J Wisconsin Avenue, N.W., Suite 570

Washington, D.C. 20015

Tel: (202) 237-2727

Fax: (202) 237-6131

-28-

By: _____
Michael D. Hausfeld
COHEN, MILSTEIN, HAUSFELD & TOLL, P.C.
1100 New York Avenue, N.W.
West Tower, Suite 500
Washington, D.C. 20005
Tel: (202) 408-4600
Fax: (202) 408-4699

By: Mark M. Lelther for
Stephen D. Susman
SUSMAN GODFREY L.L.P.
1000 Louisiana Street
Suite 5100
Houston, TX 77002
Tel: (713) 651-9366
Fax: (713) 653-7897

NON-RELEASED PARTIES

Alusuisse Lonza Group Ltd.
Bioproducts, Inc.
Chinook Group, Inc.
Chinook Group Ltd.
Cope Investments, Ltd.
DCV, Inc.
Degussa-Huls Corporation
Degussa-Huls AG
Degussa Inc.
DuCoa LP
E. Merck
EM Industries, Inc.
Lonza Inc.
Lonza AG
Merck KgaA
Mitsu & Co., Ltd.
Nepera, Inc.
Nippon Soda Company, Ltd.
Novus International, Inc.
Reilly Chemicals, S.A.
Reilly Industries, Inc.
Sumitomo Chemical America, Inc.
Sumitomo Chemical Co., Ltd.
Tanabe Seiyaku Company, Ltd.
Tanabe U.S.A., Inc.
UCB S.A.
UCB, Inc.
Russ Cosburn
Peter Copland
Antonio Felix
J.L. (Pete) Fischer
Lindell Hilling
John Kennedy
Robert Samuelson
Patrick Stayner